

ISSUE DATE: June 10, 1998

DOCKET NO. P-999/M-97-909

ORDER EXTENDING PROTECTIVE AGREEMENT

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the State of Minnesota's
Possible Election to Conduct Its Own
Forward-Looking Economic Cost Study to
Determine the Appropriate Level of Universal
Service Support

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PROCEDURAL HISTORY

On February 8, 1996, the federal Telecommunications Act of 1996 became effective. Among other things, the Act grants telecommunications carriers the right to interconnect with local telephone companies, and to buy a local telephone company's services, or elements of its network unbundled from other elements. 47 U.S.C. § 251. Where the parties cannot agree on appropriate price and terms, the Act gives states a fixed period in which to arbitrate such terms based on cost. 47 U.S.C. § 252. The Act also directed the Federal Communications Commission (FCC) to take steps to promote "universal service". 47 U.S.C. § 254(b).

On June 26, 1996, MFS Intelenet asked the Minnesota Public Utilities Commission to arbitrate the price and terms for interconnecting with the network of, and for buying the unbundled network elements (UNEs) of, U S WEST Communications, Inc. (U S WEST). Consolidated Arbitration, P-442, 421/M-96-855, P-5321, 421/M-96-909, and P-3167, 421/M-96-729.

On December 2, 1996, within the deadline prescribed by the Act, the Commission issued its ORDER RESOLVING ARBITRATION ISSUES AND INITIATING A US WEST COST PROCEEDING. In this order, the Commission established a docket to analyze these prices and terms with more deliberation than the Act's timeframes allowed. In the Matter of a Generic Investigation of U S West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 (U S WEST Generic Cost Docket). In this docket, AT&T Communications of the Midwest, Inc. (AT&T) and MCI Metro Access Transmission Services, Inc. (MCI) advocated the selection of the HAI economic model. This docket addresses, among other things, the merits of the HAI for estimating costs.

On May 8, 1997, the FCC issued new universal service rules. FCC 97-157, In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997), corrected by Errata, FCC 97-157 (June 4, 1997) (Universal Service Order). The order provided for price supports in high-cost areas. The order granted states the

opportunity to propose how costs would be determined within the non-rural portions of their jurisdiction; the FCC would determine how to measure costs for states that did not submit their own measurements on a timely basis. Universal Service Order, ¶¶ 247 - 51.

On August 8, 1997, the Minnesota Public Utilities Commission opened the present docket by issuing its ORDER ELECTING TO CONDUCT MINNESOTA-SPECIFIC COST STUDY AND ESTABLISHING DEADLINE (Universal Service Cost Docket). As in the U S WEST Generic Cost Docket, this docket would address the merits of the HAI for estimating cost. The Commission referred the matters in this docket to an administrative law judge (ALJ) for adjudication.

On April 2, 1998, the USF ALJ issued his report and closed the record of this proceeding.

Also on April 23, 1998, the ALJ in the U S WEST Generic Cost Docket heard a motion from U S WEST to compel discovery of information possessed by PNR and Associates of Jenkintown, Pennsylvania (PNR). Attached to the motion were the following materials:

- A March 5, 1998 order of the Public Utilities Commission of Nevada precluding the use of the HAI model 5.0 “until interested parties have been granted access to the data used by PNR”. Apparently this order had the result of inducing PNR to permit inspection at PNR’s premises in Pennsylvania of certain data that heretofore had not been available to adverse parties.
- A subsequent paper, apparently written by Sprint Communications Company, L.P., discussing what the new information had revealed about HAI.

On April 28 and 29, 1998, the ALJ in the U S WEST Generic Cost Docket issued orders directing AT&T and MCI to authorize PNR to disclose certain data to U S WEST and the Minnesota Department of Public Service at PNR’s Pennsylvania premises.

At the Commission’s meeting on May 12, 1998, Contel of Minnesota, Inc., d/b/a GTE Minnesota (GTE) moved in the current docket for Commission authorization to review PNR data related to population clusters in all GTE wirecenters in Minnesota, analogous to the authority granted U S WEST by the ALJ in the U S WEST Generic Cost Docket. In its ORDER GRANTING GTE MOTION TO COMPEL DISCOVERY, issued in the Universal Service Cost Docket, the Commission declared that,

consistent with the Commission’s preference for broad discovery, the Commission will grant the motion.

* * *

GTE may have the same access to PNR data on the same terms — including the signing of an appropriate agreement protecting PNR’s proprietary interest in the data — as was granted to U S WEST....

On May 13, 1998, AT&T offered and GTE signed the same protective agreement signed by U S WEST. The agreement referred to the U S WEST Generic Cost Proceeding, and restricted the use of protected materials to “the above-referenced proceeding,” *i.e.*, the U S WEST Generic Cost Docket.

On May 22, 1998, GTE filed a motion with the Commission raising the issue of how GTE may use, in the context of the Universal Service Cost Docket, the knowledge it gained from the PNR data. On May 27, AT&T and MCI objected to the use of that knowledge in this docket.

On June 2, 1998, the issue of whether GTE may use the PNR data in the context of the Universal Service Cost Docket came before the Commission.

FINDINGS AND CONCLUSIONS

It is unclear to the Commission that a further order is necessary. The Commission issued its May 12th ORDER GRANTING GTE MOTION TO COMPEL DISCOVERY in the Universal Service Cost Docket, and nothing in that order suggests that the Commission intended to grant GTE authorization to obtain data solely for use in the U S WEST Generic Cost Docket. Indeed, since GTE is not party to the U S WEST Generic Cost Docket, such a contrary conclusion seems absurd. GTE explained that it filed its May 22 motion out of an abundance of caution to respect the terms of protective agreements. In this same spirit, then, the Commission issues this order.

On May 12th, the Commission granted GTE's motion to compel discovery "consistent with [the Commission's] preference for broad discovery...." That preference has not varied since May 12th. That preference prompts the Commission to extend the terms of the protective agreement in the U S WEST Generic Cost Docket to the current docket, so that GTE may use the PNR data in this docket.

ORDER

1. The Commission extends the terms of the protective agreement in the U S WEST Generic Cost Docket to the current docket, so that GTE may use the PNR and Associates (PNR) data in this docket.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar

Executive Secretary

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